

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

In re)	
)	
Virgin Mobile USA, L.P.)	
)	Docket No. 14-0475
Application For Limited Designation As An)	
Eligible Telecommunications Carrier)	
)	

VIRGIN MOBILE USA, L.P.’S APPLICATION FOR REHEARING

Virgin Mobile USA, L.P. (“Virgin Mobile”), pursuant to Section 10-113 of the Illinois Public Utilities Act (“Illinois Act”), 220 ILCS 5/10-113, and Section 200.880 of 83 Illinois Administrative Code, requests rehearing and reconsideration of the Commission’s May 20, 2015 Order (the “May 20th Order”). The May 20th Order concludes that Virgin Mobile must remit 9-1-1 surcharges pursuant to the Illinois Prepaid Wireless 9-1-1 Surcharge Act (“PW9SA”), 50 ILCS 753, on the value of no-charge or free Lifeline services.¹ However, on May 31, 2015, the Illinois legislature passed SB0096, which provides explicitly that the prepaid wireless 9-1-1 surcharge “is not imposed on the provider or the consumer for wireless Lifeline service where the consumer does not pay the provider of the service.” 50 ILCS 753/15(g) (proposed). Governor Rauner is expected to sign this bill, putting into effect the clear statement that no 9-1-1 surcharge applies to no-charge transactions with Lifeline participants. The Commission should modify its finding to be consistent with the law.

Virgin Mobile also incorporates by reference, and reasserts herein, each of the arguments set forth in its briefs to the Administrative Law Judge relating to surcharges under the PW9SA at

¹ Virgin Mobile’s Motion for Rehearing is limited to this issue and does not affect any other portion of the May 20th Order.

Virgin Mobile's Initial Brief, page numbers 1-17, and Virgin Mobile's Reply Brief, page numbers 1-6.

ARGUMENT

I. The Illinois Legislature Expressly Excluded No-Charge Lifeline Services From PW9SA Remittances After The May 20th Order

Following the Commission's entry of the May 20th Order, both houses of the Illinois Legislative adopted revisions to the Illinois 9-1-1 acts, including (*inter alia*) the PW9SA, the Emergency Telephone Safety Act, and the Wireless Emergency Telephone Safety Act (the "9-1-1 Act Revisions"). SB0096, passed May 31, 2015, attached hereto as Exhibit 1. The 9-1-1 Act Revisions implement a wide-array of changes to the calculation, administration, and procedures relating to 9-1-1 surcharge remittances in Illinois. With respect to the PW9SA, the 9-1-1 Act Revisions provide as follows at 50 ILCS 753/15(g):

The prepaid wireless 9-1-1 surcharge imposed under subsections (a) and (a-5) of this Section is not imposed on the provider or the consumer for wireless Lifeline service where the consumer does not pay the provider for the service. Where the consumer purchases from the provider optional minutes, texts, or other services in addition to the federally-funded Lifeline benefit, a consumer must pay the prepaid wireless 9-1-1 surcharge, and it must be collected by the seller according to subsection (b-5).

Ex. 1, SB0096 at page 32 [emphasis added]. The legislative enactment reinforces the Legislature's conclusion that no remittance is required for no-charge or free Lifeline services. The comments state that the 9-1-1 Act Revisions "[p]rovide[] that amounts to be charged or assessed under the Public Utilities Act to certain entities ***is not imposed on a provider or the consumer for wireless Lifeline service where the consumer does not pay the provider for the service*** unless the consumer purchases optional minutes, texts, or other services from the

provider, to be collected by the seller.”² (Emphasis added). Because SB0096 also extends the sunset of the Illinois Telecommunication Act, 220 ILCS 5/100 *et seq.*, from July 1, 2015 to July 1, 2017 (See SB0096 at p. 78.), Governor Rauner is expected to sign the 9-1-1 Act Revisions on or before June 30, 2015, putting into effect the confirming language of the application of the PW9SA to lifeline services.

The revisions to the PW9SA contradict the Commission’s conclusion relating to the PW9SA. The Commission’s May 20th Order states that “[a]ll carriers that provide E911 service are obligated to pay their respective share [into the E911 system]... [and t]he exchange between a Lifeline provider and Lifeline customer appears to be a retail transaction as defined by the law.” (May 20th Order, 23). This conclusion by the Commission conflicts with the provisions of 50 ILCS 753/15(g) as amended by SB0096.

SB0096 is further consistent with the FCC’s Rules that there is no assessable “retail” transaction between Lifeline provider and a customer when the Lifeline provider receives reimbursement from the Universal Service Fund. The May 20th Order adopts the view of the Staff of the Commission that “The Customer uses the Lifeline support to purchase the prepaid wireless telecommunications service ... Regardless of the fact that the Lifeline support goes directly to the ETC, it does so on behalf of the customer and at the customer’s directly ... The Lifeline support is used by the customer to buy Applicant’s prepaid wireless Lifeline service.” (May 20th Order, 22). This conclusion by the Commission that “the Customer uses the Lifeline support to purchase the prepaid wireless telecommunications service” conflicts with the FCC Lifeline regulations, which provides that the universal service support is paid to the provider

² Located at:
<http://www.ilga.gov/legislation/billstatus.asp?DocNum=0096&GAID=13&GA=99&DocTypeID=SB&LegID=83927&SessionID=88>

based on the number of actual consumers service; the universal service support benefit is not paid to the Lifeline provider on behalf of any one subscriber:

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal service support for providing Lifeline **shall be provided directly to an eligible telecommunications carrier, based on the number of actual qualifying low-income consumers it serves.**

(b) An eligible telecommunications carrier may receive universal service support **reimbursement for each qualifying low-income consumer served. For each qualifying low-income consumer receiving Lifeline service, the reimbursement amount shall equal the federal support amount,** including the support amounts described in § 54.403(a) and (c). The eligible telecommunications carrier's universal service support reimbursement shall not exceed the carrier's rate for that offering, or similar offerings, subscribed to by consumers who do not qualify for Lifeline.

47 C.F.R. § 54.407(a) and (b) [emphasis added.]

Because the Commission's conclusion that Lifeline "support is used by the customer to buy applicant prepaid wireless Lifeline service" conflicts with the provisions of the FCC's rules and 50 ILCS 753/15(g) as reflected in SB0096, the Commission should reconsider its May 20th Order and make clear that Virgin Mobile is not required to collect a 9-1-1 surcharges from its no-charge customers.

II. The Commission Must Modify Its May 20th Order To Conform To The Law

Section 10-113 of the Illinois Public Utilities Act provides that the Commission should reconsider and rehear its Orders where appropriate:

the Commission may at any time ... rescind, alter or amend any rule, regulation, order or decision made by it. Any order rescinding, altering or amending a prior rule, regulation, order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original rules, regulations, orders or decisions. . . If, after such rehearing and consideration of all the facts, including those arising since the making of the rule, regulation, order or decision, the Commission shall be of the opinion that the original rule, regulation, order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may rescind, alter or amend the same.

220 ILCS 5/10-113. Further, Section 200.880 of the Illinois Administrative Code permits the Commission to reconsider its orders within 30 days of service of the order. Ill. Adm. Code § 200.880(a).

The 9-1-1 Act Revisions make clear that the Commission's May 20th Order interpretation is contrary to the Legislature's understanding of the law and the modified statute. Following the May 20th Order, the Legislature made plain that no remittance is required in that circumstance. Furthermore, as of its effective date, the law requires no remittance for no-charge or free Lifeline services. Consequently, the Commission's May 20th Order has been superseded by the Legislature's interpretation of the PW9SA and a modification of the law. The Commission should not allow an order stating that "all application E-911 fees includes all Lifeline retail transactions," including for no-charge or free Lifeline services, to stand because its conclusion is contrary to the Illinois Legislature's understanding of the law and contrary to the modified.

CONCLUSION

Wherefore, for each of the foregoing reasons, and for the reasons articulated by Virgin Mobile in its briefs before the Administrative Law Judge, and in this motion, Virgin Mobile respectfully requests that the Commission grant rehearing on the Commission's May 20th Order, and revise its May 20th Order to confirm that no 9-1-1 surcharge is required for the no-charge Lifeline offering.

Dated: June 17, 2015

Respectfully Submitted,

/s/ Henry T. Kelly

Henry T. Kelly
Michael R. Dover
KELLEY DRYE & WARREN LLP

333 West Wacker Drive
Chicago, Illinois 60606
(312) 857-7070 (telephone)
(312) 857-7095 (facsimile)

Counsel to Virgin Mobile USA, LP